

The International Institute for Middle-East and Balkan Studies (**IFIMES**) in Ljubljana, Slovenia, regularly analyses events in the Middle East and the Balkans. Ambassador **dr. Stanko Nick¹**, member of the IFIMES International Institute and former Ambassador of the Republic of Croatia has presented his view of Croatian-Slovenian relations, laying stress on the resolution of the sea border dispute. His article entitled "**BALKAN PROBLEMS AT EUROPE'S DOOR**" is published in its entirety.



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BALKAN PROBLEMS AT EUROPE'S DOOR

It was a wonderful sunny afternoon in early autumn of 2000. A Croatian Navy patrol-boat was gliding along the Adriatic coast in the "role" of a presidential yacht with a handful of passengers on board – President Stjepan Mesić and President Milan Kučan with about ten companions – all very good-humoured after some most friendly talks (which in fact did not bring the two nations any closer), enjoying the voyage in the Dubrovnik waters and admiring the spectacular view of the steep coast and picturesque islands. At one moment President Kučan, jokingly yet trying to continue previous discussion, remarked: "See, Stipe, how much sea and how many islands Croatia has. Would it make a difference if you gave Slovenia that little piece we need to get out to the open Adriatic Sea?". As I was standing next to President

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Mesić I asked him if I could comment on that. Receiving his positive hint I turned to our Slovenian guest: "With all due respect, Mr. President, have you posed a similar question to the Italians? Namely, they have even more sea than Croatia – Italy is surrounded by water on three sides..."

IN REALITY THERE IS NO "PROBLEM"

Years have gone by. Slovenia's policy on the so called "problem" of the Piran bay has shown that our neighbours have not forgotten anything nor have they learnt much during these past years. First of all it should be noted that in reality the "problem" does not exist. The thesis on the exit to the high seas (this term does not even exist in international law!) was initially launched as a test balloon or perhaps a very naive attempt to conceal or attribute secondary importance to numerous unresolved questions between the two states which sprang up after the disintegration of SFRY (such as the Ljubljanska banka debt, Krško nuclear power plant, unusual occupation of Sveta Gera alias Trdinov Vrh and other). As time has passed the thesis was increasingly used by Slovenia's political parties in their fight for power, attributing it the character of a first-class, existential or even vital national question, until it eventually assumed monstrous dimensions and turned into a usual case of territorial revindication in an attempt to extend the territory of one state on account of the neighbouring state and at the same time being used as a means to exert pressure on Croatia and even to condition its candidacy for the Euro-Atlantic integration. On the other hand, it should be also noted that reactions in Croatia, especially in the public and sometimes in the media, were often precipitate and poured oil on the flames.

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Let us disentangle this complicated situation piece by piece. As it is generally known, the north part of the Adriatic gradually narrows until somewhere below 45°30' of north latitude the total width of the sea falls below 24 nautical miles of Croatian territorial sea on one side and Italian sea on the other side. At that point the line of the high seas ends and further to the north the respective parts of the territorial sea belonging to both countries gradually narrow. Slovenia has a relatively small part of eastern Adriatic coast, but still comprising the port of Koper and the towns of Izola, Piran and Portorož, which is enough to keep it out of the group of so called land-locked countries which have no sea coast at all. Dear God endowed some countries with lots of sea, some with little sea, and some with none at all; some again have mountains while others not, and some have both, while others have none of these features but still manage to live happily. So what is it that Slovenia wants in this concrete case? Most of all, a direct connection of its territorial sea with the high seas (the so called "exit"). What would it get from this? Absolutely nothing that it already does not have! The Convention on the High Seas (Geneva, 1958.) and particularly the 1982 UN Convention on the Law of the Sea guarantee all states (even those which are land-locked) the freedom of navigation, the so called exit or – using the term from the 1982 Convention – the freedom to fly over the high seas, the use of ports and

everything else provided for in these international documents. Croatia has even offered to support this status with special international guarantees (although that is not necessary with the already valid Convention), but Slovenia did not accept that offer. The same context could be applied to the next item on the list of Slovenia's demands – the Piran bay (or Savudrijska Vala as we like to call it in Croatia, probably to highlight Croatian character for at least one half of this bay) which Slovenia claims in its entirety. The main reason for this unprecedented demand is that Slovenia hopes its territorial sea could thus extend at least a little bit closer to the desired line of the high seas. However, to the regret of Slovenians, that is still not far enough, since the Piran bay lies about fifteen miles north-east from the nearest point of the high seas. Moreover, the international law lays down some long-established principles (which were clearly codified in the new Convention) on delimitation of the sea border, and there is not even one case of a state having the coast where already a few metres from that coast the sea would belong to another state. Another reason for Slovenia's demand is the right to fish. The interest of Slovenian fishermen to fish in the whole Piran bay or even beyond that is surely a strong motive, but it would be much easier, faster and less complicated to resolve that issue through agreements (of course with appropriate compensation which is usual practice in the world). The Slovenian international "cuisine" therefore prepared a thesis of the so called corridor, i.e. a narrow passage running through Croatian territorial Sea which would belong to Slovenia and connect "Slovenian" territorial sea (read – the Piran bay from the Cape of Savudrija which lies in the Republic of Croatia) with the high seas. Of course, Croatia is not ready to give up a part of its territory nor aquatory since there are no reasons for such "bestowal". If Croatia is to be blamed for anything, it is for the wrong position it assumed at the very beginning of the talks on delimitation of the sea in order to show "goodwill" to Slovenia, although some prominent experts on the law of the sea and experienced diplomats had warned that the international law knows no "goodwill" but only provisions written in laws and the Convention. Unfortunately, this indulgence only encouraged unfounded appetites of the other party.

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There are also some relevant written texts in this field. Croatia and Slovenia accepted the often cited Opinion No. 3 of Badinter Commission that the borders of former republics of SFRY should become the borders of new states, and they both agreed that the situation as at 25 June 1991 should be used as the criterion for the delimitation of the territory. The problem is that the two states do not agree on what the situation on that important date was. Although the text of the Opinion No. 3 does not mention the sea border, there is no doubt that it could and should be applied also to this issue. Another important document is the Memorandum of the Republic of Slovenia of 7 April 1993, followed by three Slovenian texts sent during 1999 and one non-paper communicated from the Croatian side. Since my article is too short for a detailed analysis of above documents, I recommend the interested readers to consult Prof. Vladimir Ibler's "Međunarodno pravo mora i Hrvatska" [International law of the sea and Croatia] (Barbat, Zagreb 2001.) which includes also texts of the most important conventions. Worth mentioning is also the so called

Drnovšek-Račan agreement which the Slovenian side persistently recalls. Namely, the delegations of both countries examined the question of delimitation of the Piran bay (again without participation of Croatian experts on the law of the sea) and agreed on the text which was initialled by the leaders of the two delegations in the presence of prime ministers Ivica Račan and Janez Drnovšek. However, the text of the agreement was never signed and the Croatian Parliament rejected to read it. Legally the agreement does not even exist and one needs not be an expert on international law to know the meaning of initialling a draft agreement – it represents merely a confirmation that the draft is technically correctly written, copied or translated, without going into its content.

SLOVENIAN CASE – A DANGEROUS PRECEDENT FOR FUTURE CANDIDATE STATES

Little by little, things became complicated. A few metres from the Croatian-Slovenian border (on Croatian side) on the left bank of the Dragonja river, a local clown (it is not excluded that he was encouraged and assisted by certain political actors from the other side of the border) hung out on his house the Slovenian flag and the banner with the inscription "This is Slovenia, too". As that did not produce the desired effect, he started to cross the river a few metres below the official border crossing point and to provoke incidents in various other ways. The temperature was rising on both sides. Journalists, experts and "professionals" tried to prove that their country was right and they even strove to win international support. In Croatia, appeals were made to boycott Slovenian products, which are largely present on Croatian market shelves, while in Slovenia, public opinion polls were organised showing Croatia as the least popular country. "We won't go skiing to Slovenia!" (or we won't spend summer holidays in Croatia) was the next campaign. Slovenia now no longer demands only the extension of its aquatory, but puts under question the whole of its eastern border. Croatia's plan was to become a full NATO member at the beginning of April 2009 and to conclude the EU accession talks by the end of 2009. In February Slovenia suddenly established that the documentation submitted by Croatia to the European Commission contained certain elements which prejudiced the border between the two states and decided to block the accession process over a series of chapters. This was followed by an absurd political turnabout. In the general psychosis against Croatia, Slovenian parliament was on its way to block also Croatia's membership in NATO (which was on one hand self-contradictory since Slovenia like all other NATO members already voted in favour of Croatia's membership, while on the other hand it was logical since the conditions for EU and NATO membership are almost identical). However, when the "big brother" in NATO made it clear that they do not want anyone to block the enlargement, Slovenian Prime Minister Borut Pahor obviously found himself in an unpleasant situation when he had to calm down the temperature and enable the accession process to continue. Thus both Slovenian President and Prime Minister started to appeal to the citizens not to sign the proposal for referendum, while the Government and National Assembly stated they would do

everything in their power to avoid the referendum. Still, one small non-parliament party managed to launch an initiative for a referendum on Croatia's membership in NATO. Regardless whether they succeed with the referendum, the statutory time-limit for collecting signatures will prevent the planned accession of Croatia (and most probably also Albania which will be the "collateral victim" of the circumstances) at the next NATO summit in April. Moreover, Slovenian legislation has not provided for the minimum voter turnout for a referendum to be valid and therefore the decision supported by the majority of voters, regardless how large it is, is regarded as the valid one. Obviously, the resolving of open bilateral issues should be separated from the negotiations on membership in international organisations and unions (there have been several such cases in Europe in recent years), and that should apply to both EU and NATO. Slovenian case could represent a very inconvenient and dangerous precedent for future candidate states.

OFFERING A "POLITICAL" RATHER THAN A LEGAL SOLUTION

What is the way forward? How to find a way out of dead-end situation and cut the escalation spiral?

There are of course numerous mechanisms for peacefully resolving disputes among states, such as negotiations and consultations, good turns, investigation commissions, mediation, reconciliation, compensation, arbitration and resolving of disputes before the court or through international organisations. Both Croatian and Slovenian side had opted for such approach at a very early stage. However, the problem arose as they could not agree on the formula to be applied for the peaceful resolution of the dispute. Croatia is ready to leave the case to the International Court of Justice in the Hague and submit to the judgement based on the valid international law, while Slovenia – undoubtedly aware of its weak legal position – demands some kind of mediation or reconciliation, i.e. a procedure in which a third party has the right to submit a proposal and the formula for resolving the dispute, which is not based on law but on the equity or *ex aequo et bono* principle (whereby the mediator only offers technical service of transmitting messages, establishing contacts, providing venues for negotiations etc.). Clearly the equity principle is and can not be in contradiction with the international law. It is usually applied by international judicial bodies as a complementary means in cases which are not at all or not sufficiently covered by international or multilateral agreements. That category certainly does not include delimitation of the sea which is regulated in detail by the up-to-date convention. At this point I would like to warn of the danger of calling a third party (or third parties) for help. An example of such third-party assistance would be a three-member panel of experts recently proposed by the European Commission – its aim would be to increase the pressure of the international community on Slovenia because of its unusual and unacceptable blocking of Croatia, and on Croatia in order to force it to accept at any price some offered ("political" rather than legal) solution only to get rid of the problem (while this would bring

another trophy to some impostor guru pretending to be a successful mediator and peacemaker - there were quite a few such gurus during war clashes in the territory of former Yugoslavia), not paying much attention to the real interests of both parties to the dispute.

HOW TO "CONQUER" THE WHOLE ADRIATIC?

Croatia and Slovenia have a very long history of coexistence in the same geopolitical space. The two nations shared the good and the bad times, they were never at war with each other (until now, add the cynics) and often they together resisted the aggressors. No doubt, there are many interests and good reasons to continue that co-operation and to help each other today and in the future, and those interests are much more valuable and important than any minor discords that have generated over the last few years. We need no mediator, peacemaker or arbitrator and most probably neither the international court to resolve our discords. All we need is to show patience and tolerance on both sides, to make conscious efforts to control inflamed passions, to avoid pouring oil on the flames and provoking extremist acts and incidents, and to think how to help one's neighbour rather than to hurt him. To start with, we should intensify expert dialogues (not only on the law of the sea and borders but also on fishery, environmental protection, agriculture and economy, fighting organised crime and other *real* problems that are present in both countries), intensify and develop cross-border co-operation as well as dialogues at the political level. Should we not be able to resolve these few open questions which have grown to unjustifiably exaggerated dimensions during the past few years, they should be put away in a drawer for some time (since practically nothing depends on their resolving), and treated like that ridiculous *casus belli* between the kingdoms of Lilliput and Blefuscu so masterfully caricatured by satirist Swift in his *Gulliver's Travels*: should the boiled egg be opened at the small or big end?

If it turns out that such an approach can not be applied, I am ready to support the position which is more and more often expressed in Croatia: EU and NATO membership have been our equally important priorities for many years. If some of the "key factors" believe that we do not fulfil the conditions for membership in any of the two organisations, that will not stop us from continuing the necessary reforms and democratic processes, not for the sake of Europe or any other side but for our own sake and for the progress of our country. Sooner or later, we will join both organisations, and we will join them simultaneously, not only because the conditions for membership in both are practically the same, but most of all because we can not allow anyone – whether big or small – to blackmail and manipulate our state and nation, its interests and its future. Having scored an own goal in this story, Slovenia will surely realise soon that its genuine and long-term interest is to develop friendly relations with the neighbouring state of Croatia and to offer its maximum assistance to Croatia to become a full EU and NATO member as soon as possible,

since in this way Slovenia will "conquer" not only a small part of a gulf but the whole of the blue Adriatic Sea.

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